

Senate Bill 1210 (Baca) Chapter 758*Exemption for containers used for shipping food products*

Tax levy; effective October 10, 1999, but operative April 1, 2000. Amends Section 6364 of the Revenue and Taxation Code.

This bill provides an exemption from sales and use tax for the sale or purchase of any container, when sold without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged for sale.

Sponsor: CHEP, a third party pallet and container pooling company based in New York

Law Prior to Amendment:

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax.

Section 6364 of the Sales and Use Tax Law provides an exemption from sales and use tax for sales and purchases of the following containers:

- Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container (e.g., a detergent manufacturer who purchases cardboard boxes for purposes of packaging the detergent for subsequent sale would not be required to pay tax on the purchase of that packaging material).
- Containers when sold with the contents if the sales price of the contents is not taxable (e.g., egg cartons sold with eggs are not subject to tax).
- Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling (e.g., a returnable soft drink bottle sold with the soft drink is not subject to tax).

The Board's Regulation 1630, *Packers, Loaders, and Shippers*, addresses the application of tax to containers used by persons engaged in business of preparing goods for shipment (packers) when those persons are not the sellers of the goods. Generally, when the packer is not the seller of the contents, the packer is regarded as a consumer of the packing materials and containers, and the sale of the containers or

packaging materials to the packer is taxable, unless the packer expressly contracts with his or her customer for the sale to that customer of the container or packaging materials, making a separate charge of those items, with title passing from the packer to the customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the packer for reuse. However, the regulation further specifies that sales tax *does not apply* to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale. Therefore, nonreturnable produce boxes, for example, sold to packers who place a grower's produce in the container for subsequent sale are currently not subject to tax. If the produce boxes are "returnable" (meaning they are customarily returned to the packer for reuse) the containers would be subject to tax.

Background:

The provision in the Board's Regulation 1630 regarding packers of food products was added late in 1996 in response to concerns raised by fruit trade associations. Representatives of the industry pointed out that in many cases, some growers pack their own fruits and vegetables as well as pack the produce of others. Consequently, in such cases, the packaging materials purchased by a grower to pack his or her own produce *was not* taxable under Section 6364(a), but the same packaging material purchased to pack another grower's produce *was* taxable. The change to the regulation therefore exempted all such packaging material from the tax in order to eliminate this inconsistent tax treatment.

Comments:

1. **Purpose.** To obtain an exemption for leases of pallets/containers to manufacturers who use the returnable pallets/containers to transport agricultural products to their customers – similar to how nonreturnable packaging materials purchased by produce packers are treated under the Board's regulation. CHEP, the sponsor of the bill, points out that the returnable aspect of its containers reduces waste – CHEP pallets in the grocery industry eliminate approximately 65% of the wasted lumber or 3 billion pounds – and should be given the same tax treatment as the nonreturnable containers are given that are used by produce packers.
2. **Why does tax currently apply to these containers?** The containers manufactured by CHEP are returnable, in that they are customarily returned to CHEP for reuse. As a "returnable" container, in order to meet the conditions of the exemption provided in the current Section 6364, the container must either have been sold (or leased) with exempt contents or sold (or leased) with the contents in connection with a retail sale of the contents, or resold (or re-leased) for refilling. Since CHEP does not sell or lease the containers with the contents (they are leased to manufacturers who place the contents in them), the only

condition upon which an exemption would apply would be cases in which the containers are resold by CHEP for refilling. Therefore, under the law prior to this measure, tax applied to the charges by CHEP for the initial lease of the container, but the subsequent lease of the container for refilling was exempt from tax.

3. **Bill will not be problematic to administer.** The law prior to enactment of this measure applicable to the taxation of containers that CHEP sells or leases set up an almost illogical result (the initial lease was taxable, the re-lease was exempt). Exempting the sale and lease of these containers will actually simplify the tax law.